

“Report of Lien Search,” or similar form prepared in accordance with the State requirements prescribing the use of such form for Operating loans.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed. The opinion of title or title insurance policy and any water stock certificates will be retained in the borrower's county office case folder.

[39 54 3662, Jan. 29, 1974, as amended at 56 FR 67472, Dec. 31, 1991]

§ 1823.415 Supervision and servicing.

Borrowers will be supervised in accordance with subpart A of part 1942 of this chapter. Loans will be serviced in accordance with subpart E of part 1951 of this chapter. The cooperation, assistance, and advice of appropriate BIA officials will be sought at all times.

[39 FR 3662, Jan. 29, 1974, as amended at 47 FR 52119, Nov. 19, 1982; 54 FR 47196, Nov. 13, 1989]

§ 1823.416 Check request and loan closing.

Before any loan can be closed, the District Director must notify the State Director in writing that all loan closing conditions have been met. Checks will be requested and loans will be closed in accordance with subpart A of part 1942 of this chapter.

[39 FR 3662, Jan. 29, 1974, as amended at 54 FR 47196, Nov. 13, 1989]

§ 1823.417 Civil rights.

Indian tribes, for the purpose of this subpart, are not subject to title VI of the Civil Rights Act of 1964 so long as the expected use of land acquired does not include operation of a facility which would be open to the public. Therefore, such tribes are not subject to part 1816 of this chapter.

§ 1823.418 State requirements.

Each State Director will, with the assistance of OGC, supplement this Subpart with State regulations, forms, worksheets, sample documents, and such other guidance as necessary to successfully carry out the program.

EXHIBIT A TO SUBPART N TO PART 1823— LOAN DOCKET ITEMS—LOANS TO INDIAN TRIBES AND TRIBAL CORPORATIONS

(1) The tribe with the assistance of BIA will provide the following:

SF 424.1: Application for Federal Assistance (For Non-construction).

Form FmHA or its successor agency under Public Law 103-354 1910-11: Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts. (O & 1C—Sign O);

Official audit report of the preceding 4 years including income and expenses;

List of tribal officers, including title and addresses and signature identifications;

Copy of tribe's constitution and bylaws or charter or other evidence of organization and rules of operation;

Legal services contract approved by BIA if a private law firm. A written statement will be provided when a BIA attorney performs the legal services.

Land Utilization Plan including:

(a) A short narrative description of why the land is being purchased, what use is to be made of it, and the annual net income expected to be derived from the land. If it has proven income record, that information should be included. If not, it should be so stated. If any development work is contemplated by the tribe, this should be explained, including assurance of the source of funds to carry out such development. If the land is to be operated by the tribe, this should be described, including assurance of availability of the necessary money to meet operating costs and method of management. If the land is to be leased, there should be a description of how it will be used and assurance that its intended use will conform to the overall land use pattern of the reservation or any variations justified; (b) Recommendation of BIA Soil Conservation Specialist.

Form FmHA or its successor agency under Public Law 103-354 440-34: Option to Purchase Real Property or similar purchase agreement containing the provisions of the option.

Form FmHA or its successor agency under Public Law 103-354 440-35: Acceptance of Option.

Form FmHA or its successor agency under Public Law 103-354 442-7: Operating Budget or Statement of Income and Expenses including income and expenses from all sources.

Resolution of Tribal Council or other governing body approving and providing for the proposed land acquisition and any actions necessary to carry it out, such authority to encumber real estate and waiver of immunity and, where legally necessary, evidence of any required tribal election or referendum. The resolution should substantially conform with Exhibit B.

Subordination Agreement by BIA using Exhibit D as a guide.

Form FmHA or its successor agency under Public Law 103-354 1942-46: Letter of Intent to Meet Loan Conditions Fidelity Bond for tribal officers authorized to handle monies.

Form FmHA or its successor agency under Public Law 103-354 1927-9: Preliminary Title Opinion, if required.

Form FmHA or its successor agency under Public Law 103-354 442-20: Right-of-Way easement, or right-of-way instrument, if appropriate.

Form FmHA or its successor agency under Public Law 103-354 442-21: Right-of-Way Certificate, if appropriate.

Form FmHA or its successor agency under Public Law 103-354 442-22: Opinion of Counsel Relative to Right-of-Way, if appropriate.

Form FmHA or its successor agency under Public Law 103-354 440-13: Report of Lien Search, if appropriate.

Form FmHA or its successor agency under Public Law 103-354 1927-10: Final Title Opinion, if required.

(2) The FmHA or its successor agency under Public Law 103-354 County Supervisor will provide the following:

Form FmHA or its successor agency under Public Law 103-354 1922-1: Appraisal Report—Farm Tract if BIA or commercial appraisers have not provided a present market appraisal.

Form FmHA or its successor agency under Public Law 103-354 1927-13: Waiver of Encumbrances, Exceptions and Reservations, if required.

Form FmHA or its successor agency under Public Law 103-354 440-2: County Committee Certification or Recommendation.

Form FmHA or its successor agency under Public Law 103-354 424-49: Project Summary (Loans to Indian Tribes and Tribal Corporations).

Form FmHA or its successor agency under Public Law 103-354 1942-14: Association Project Fund Analysis Letter of Conditions.

Form FmHA or its successor agency under Public Law 103-354 1940-1: Request for Obligation of Funds.

Form FmHA or its successor agency under Public Law 103-354 440-22: Promissory Note.

Form FmHA or its successor agency under Public Law 103-354 440-9: Supplementary Payment Agreement, if required.

Form FmHA or its successor agency under Public Law 103-354 1927-1 (State): Real Estate Mortgage.

Form FmHA or its successor agency under Public Law 103-354 402-1: Deposit Agreement, if required.

[39 FR 3662, Jan. 22, 1974, as amended at 41 FR 7488, Feb. 19, 1976; 54 FR 29330, July 12, 1989; 54 FR 47196, Nov. 13, 1989; 55 FR 13503, Apr. 11, 1990; 56 FR 67472, Dec. 31, 1991; 58 FR 44752, Aug. 25, 1993]

EXHIBIT B TO SUBPART N TO PART 1823— TRIBAL COUNCIL RESOLUTION NO.

A RESOLUTION OF THE TRIBAL COUNCIL OF THE _____ TRIBE AUTHORIZING AND PROVIDING FOR: (1) THE ISSUANCE OF AN INSTALLMENT PROMISSORY NOTE IN THE PRINCIPAL AMOUNT OF _____ TO FINANCE THE PURCHASE OF LAND, (2) THE GIVING OF SECURITY, (3) THE COLLECTION, HANDLING, AND DISPOSITION OF REVENUES OF THE LAND TO BE PURCHASED AND ANY OTHER LAND TO BE ENCUMBERED AS SECURITY, AND (4) RELATED ACTIONS AND MATTERS.

The _____, (hereafter referred to as "Tribe"), is an Indian Tribe recognized by the Secretary of the Interior or is a tribal corporation established pursuant to the Indian Reorganization Act;

The Tribe wishes to acquire interests in approximately _____ acres of real estate (hereinafter called "the land") within its reservation or community for the use of and the improvement of the economic standing of the Tribe or its members but does not have adequate uncommitted funds for such acquisition.

A meeting of the tribal council or other governing body (hereafter called the "Council") with the required number of Council members present was held at _____ on the _____ day of _____, 19____, pursuant to notice thereof as required by its constitution, by-laws, corporate charter, or other organizational documents, (hereafter called the "constitution") to consider a plan to finance the proposed land acquisition.

The Tribe has the authority to acquire lands or interests therein.

The Tribe is authorized to mortgage or otherwise hypothecate its land either by its constitution, or by a tribal referendum whereby such mortgage or other hypothecation was approved by at least a majority of the qualified voters at an election in which at least 20 percent of those eligible voted, or under such other rules as may be prescribed by the constitution of the Secretary of the Interior.

The Secretary of the Interior or his authorized representative has approved the mortgaging or hypothecation of the land.

As shown by the minutes of said meeting, of the _____ (Number) Council members of record of the Tribe there were present and voting _____ Council Members and by a recorded majority vote, determinations were made and actions authorized as follows:

That in order to acquire the land, the Council was authorized and empowered, in its discretion, for and in the name of the Tribe, to make application to the Farmers

Home Administration or its successor agency under Public Law 103-354 of the United States Department of Agriculture (hereafter referred to as the "Government") for financial assistance; to cause the execution and delivery of promissory note or notes or other evidence of indebtedness and a mortgage, or other appropriate security instrument, to secure any loan or loans made, or insured, by the Government; to comply with any requirements, terms or conditions prescribed by the Government or by Government regulations; and to pay, extend or renew any such indebtedness; and to execute contracts or enter into agreements and, without limitation, to take any and all other action as may be necessary, incidental, or appropriate to finance acquisition of the land or interests therein in behalf of the Tribe.

Now therefore, it is hereby resolved by the Council of the Tribe as follows:

Section 1. (Determination of Council) It is necessary to defray all of a portion of the costs of acquiring the land or interests therein by obtaining a loan to be made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and Rural Development Act and Pub. L. 91-229, it being determined that the Tribe is unable to obtain sufficient credit elsewhere to finance the acquisition taking into consideration prevailing private and cooperative rates and terms currently available.

Section 2. (Amount and Terms of Loan) The Tribe shall borrow \$ _____ and issue as evidence thereof installment promissory note(s) in the form prescribed by the Government for the full principal amount of the loan. The note(s) shall be signed by the _____ (Appropriate Official) and attested by the _____ (Appropriate Official) and the corporate or other seal of the Tribe affixed thereto, and shall bear interest from its date, which shall be the date of loan closing, at a rate prescribed by the Government in its approval of the loan, but not to exceed _____ percent per annum. The security instruments shall be in such form and contain the terms and conditions required by the Government.

Section 3. (Pledge of Revenue) The indebtedness hereby authorized shall be payable from the gross income and revenue to be derived from the operation of the tribal land, a portion of which sufficient to pay the principal and interest as and when the same shall be come due is hereby pledged and shall be set aside for that purpose.

Section 4. (Pledge of Additional Security) If the revenue pledged in Section 3 is insufficient to pay the principal and interest as and when the same shall become due or if it appears the revenue will be insufficient, the Council hereby pledges its taxing authority and the funds held in the United States Treasury in trust for the Tribe, for the purpose of making up the deficiency or expected

deficiency shall be deposited in the debt service and reserve accounts established by Sections 5 B and C hereof and used as therein prescribed.

Section 5. (Protection and Disposition of Funds) The _____ (Appropriate Official) of the Tribe shall be the custodian of all loan funds of the Tribe and all revenues pledged for the repayment of the loan. All such funds shall be deposited in accordance with Part 1902, Subpart A of this chapter. The _____ (Appropriate Official) shall execute a fidelity bond in an amount not less than \$ _____ with a surety company approved by the Government. The United States of America shall be named as co-obligee in such bond, and the amount thereof shall not be reduced without the prior written consent of the Government. The _____ (Appropriate Official) is hereby directed to establish the following accounts into which proceeds of the note, the revenues from the land, and any other income pledged for repayment shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

A. Land Acquisition Account. The proceeds of the loan hereby authorized shall be deposited in the Land Acquisition Account which shall be established as a "supervised bank account" as required by the Government. If funds in this account exceed \$100,000, it shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. When all land acquisition costs have been paid in full, any balance remaining in the Land Acquisition Account shall be applied as a refund on the loan and the Land Acquisition Account shall be closed.

B. Debt Service Account. All assigned revenues shall be deposited in the Debt Service Account until there is an amount equal to the next annual installment to become due plus any delinquencies and payments are made to the Reserve Account. The Debt Service Account will be used for making annual installment payments on the loan, payments on any delinquencies that might occur, and payments to the Reserve Account.

C. Reserve Account. Out of the funds in the Debt Service Account, there shall be transferred annually to the Reserve Account the sum of \$ _____ ($\frac{1}{40}$ of an annual payment of principal and interest) until there is accumulated in that fund the sum of \$ _____ (one annual installment of principal and interest), after which no further transfers need be made to said account except that transfers shall be made to replace any withdrawals. Funds in the Reserve Account shall be used only for the purpose of making payments of principal and interest in the event the amount in the Debt Service Account is insufficient to meet such payments.

Section 6. (Other Covenants and Agreements of the Tribe) The Tribe covenants and agrees that, so long as the indebtedness hereby authorized remains unpaid, the Tribe will—

A. Comply with applicable Federal, State, and Tribal laws and regulations and maintain the land in good condition.

B. Impose and collect such rates and charges that gross revenues will be sufficient at all times for the maintenance of the land and the funding of the Debt Service and Reserve Accounts.

C. Cause to be levied and collected such taxes or assessments as may be necessary to maintain the land in good condition, meet payments on the loan, and make the deposits required by Sections 5 B and C, if for any reason gross revenues are insufficient.

D. Maintain complete books and records relating to the operation and maintenance of the land and its financial affairs and will cause such books and records to be audited annually at the end of each fiscal year and an audit report prepared, and will furnish the Government without request a copy of each annual audit report. The audit will be conducted by independent Certified Public Accountants or by licensed Public Accountants, licensed before December 31, 1970, who are certified or licensed by a regulatory authority of a state or other political subdivision of the United States. At all reasonable times, the Government shall have the right to inspect the land and to inspect and copy the records, accounts, and data of the Tribe relating thereto.

E. Maintain such insurance coverage as may be required by the Government.

F. Not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making improvements to the land (exclusive of normal maintenance) without obtaining the prior written consent of the Government.

G. Not cause or permit any voluntary dissolution of its organization; merge or consolidate with any other organization; dispose of, transfer, or convey its title to any land or any part thereof or interest therein, by sale, mortgage, lease or other encumbrance, without obtaining the prior written consent of the Government.

H. Not modify or amend its constitution in any way that would affect the Government's security without the written consent of the Government.

Section 7. (Security Instruments) In order to secure the payment of the principal and interest or the note and any related obligations of the Tribe to the Government the _____ (Appropriate Official) and _____ (Appropriate Official) of the Tribe are hereby authorized and directed to execute and deliver a good and sufficient security instrument encumbering the land or other property and an assignment of reve-

nues and funds held in the United States Treasury for the Tribe. The security instrument shall give the Government the lien on the land, Tribal revenues, Tribal Treasury funds or other property and said officials are authorized and directed to acquire such subordination agreements as are necessary to achieve the required priority.

Section 8. (Refinancing) If at any time it shall appear to the Government that the Tribe is able to refinance the loan, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the Tribe will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take such action as may be required in connection with such refinancing loan.

Section 9. (Waiver of Immunity) In order to secure the payment of the principal and interest of the note and any related obligations, the Tribe hereby waives for the benefit of the Government any immunity from suit or liability which it may possess except that this waiver shall not extend to the acquiring of any judgment, lien, or attachment upon the property of the Tribe other than property of the Tribe other than property specifically pledged, assigned, or mortgaged to the Government in connection with this loan provided that if no real estate is mortgaged to the Government this waiver shall extend to acquiring of judgment, lien or attachment on real estate purchased with the loan herein authorized.

Section 10. (Resolution a Contract) The provisions of this resolution shall constitute a contract between the Tribe and the Government so long as the loan made or insured by the Government remains unpaid.

Section 11. This resolution shall take effect and be in force immediately.

The vote was:

YEAS: _____

NAYS: _____

ABSENT: _____

Date _____

(Appropriate official)

(Appropriate official)

CERTIFICATION

I, the undersigned, as _____ (Appropriate Official) of the _____ hereby certify that the Tribal Council or such Tribe is composed of _____ members, of whom _____ (constituting a quorum) were present at a meeting thereof duly called and held on the _____ day of _____, 19____: that the foregoing resolution was adopted at such meeting by the affirmative vote of _____ members of such Council and that said resolution

RHS, RBS, RUS, FSA, USDA

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has not been rescinded or amended in any way.

Dated this _____ day of _____, 19 _____.

Secretary of _____

[39 FR 3662, Jan. 22, 1974, as amended at 46 FR 36106, July 14, 1981]

**EXHIBIT C TO SUBPART N TO PART 1823—
ASSIGNMENT OF TRIBAL INCOME AND
FUNDS**

Whereas, the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103-354, United States Department of Agriculture (hereinafter called the "FmHA or its successor agency under Public Law 103-354") is the holder or insurer of a promissory note (hereinafter called the "Note") in the sum of _____ bearing interest at the rate of _____ percent per annum; and Whereas, ther Note was given by _____ (hereinafter called the "Tribe") to evidence the indebtedness incurred by the Tribe under a loan (hereinafter call the "Loan" made or insured by the FmHA or its successor agency under Public Law 103-354, and

Whereas, Tribal Council Resolution No. _____ dated _____, authorized the acceptance of the Loan and the issuance of the Note and pledged and assigned income and funds as security for the payment thereof; and

Whereas, the Tribe has entered into a subordination agreement with the United States Department of the Interior, Bureau of Indian Affairs (hereinafter called the BIA), whereby the General Assignment of Income dated _____ and an Assignment of Income dated _____ in favor of the BIA is fully subordinated to the Assignment made herein;

Now, therefore, in consideration of the FmHA or its successor agency under Public Law 103-354's making or insuring the Loan and to secure the payment when due of the installments on the Note, the Tribe does hereby grant, convey, pledge and assign to the FmHA or its successor agency under Public Law 103-354 (1) all annual gross income from the land purchased with the loan, and (2) all annual gross income from other sources. If the Tribe shall pay the entire principal of and interest on the Note, this Assignment shall terminate and be of no further force and effect.

In Witness Whereof, the _____ Tribe of the _____ Reservation causes this Assignment to be executed by its President and its Tribal seal to be affixed and duly attested.

(Seal) _____ Tribe of the _____ Reservation.

Attest: By _____
(Appropriate Official)

Date _____

The terms and conditions of the foregoing Assignment are hereby agreed to as of the date hereof.

BUREAU OF INDIAN AFFAIRS

U.S. DEPARTMENT OF THE INTERIOR

By _____
Title _____

**EXHIBIT D TO SUBPART N TO PART 1823—
SUBORDINATION AGREEMENT**

This Agreement, dated _____, between the United States of America, Department of the Interior (hereinafter called the "BIA", and the _____ tribe of the _____ Reservation (hereinafter called the "Tribe"), for the benefit of the Tribe and to induce the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103-354, United States Department of Agriculture (hereinafter called the "FmHA or its successor agency under Public Law 103-354"), to make or insure a loan to the Tribe:

Witnesseth:

Whereas, under date of _____, the Tribe executed and delivered to the BIA a "General Assignment and Assignment of Income" (hereinafter called the "General Assignment"), a copy of which is attached hereto and marked Exhibit A; and under date of _____ an "Assignment of Specific Income" a copy of which is attached hereto and marked Exhibit B, and Whereas, the FmHA or its successor agency under Public Law 103-354 has offered to loan or insure a loan to the Tribe in the sum of _____ for the purpose of paying part or all of the cost of acquiring interests in approximately _____ acres of real estate within its reservation pursuant to the provisions of the Act of April 11, 1970, Pub. L. 91-229; and

Whereas, FmHA or its successor agency under Public Law 103-354 requires that the annual gross income from the real estate purchased with the loan and the annual gross income from all other sources in such amount as may be necessary to pay debt service on such loan be pledged to pay the principal and interest on the loan; and

Whereas, the BIA is willing to subordinate to FmHA or its successor agency under Public Law 103-354 as security for said loan its rights under the General Assignment and under the Assignment of Specific Income to a lien on the income of the Tribe from all sources;

Now, Therefore, the BIA does agree as follows:

1. That the right it has under the General Assignment and under the Assignment of

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Specific Income as referred to in the first WHEREAS above, or any other instrument not mentioned herein to receive the income derived by the Tribe from all sources shall be in all respects subordinate, subject to and junior in right to the right of FmHA or its successor agency under Public Law 103-354 in and to said income as said rights are created and defined in the Assignment Pledge Agreements, or other agreements now or hereafter given resulting from the loan from the Farmers Home Administration or its successor agency under Public Law 103-354 to the Tribe.

2. That this subordination Agreement shall be effective as of the date hereof.

Dated this _____ day of _____, 19____.

Tribe of the
Reservation

By _____

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

By _____

Title _____

SUBCHAPTERS C–D [RESERVED]
SUBCHAPTER E—ACCOUNT SERVICING

PARTS 1863–1866 [RESERVED]

SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

PART 1872 [RESERVED]

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

PARTS 1890–1899 [RESERVED]